



American Civil Liberties Union
of Montana
Power Block, Level 4
PO Box 1317
Helena, Montana 59624
406-443-8590
www.aclumontana.org

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT NO. 1
DATE 1-25-07
BILL NO. SB 258

1/25/2007

Testimony SB 258

My name is Brigitte Anderson-Tuller. I am an attorney licensed in the State of Montana. I have practiced law in Gallatin County for over 24 years. I practice in the area of immigration and naturalization law, with a focus on family based immigration.

I strongly urge you to vote against SB 258 because the proposed law would create an enforcement quagmire.

The law would require a board or department to refuse to grant or renew a license if they determine that the applicant is an "unlawful alien." The term "unlawful alien" is defined as "an individual determined by the federal government to be deportable, under federal law, from the United States." By denying a license, the State would essentially deny people that they consider to be "unlawful aliens" the right to work. The "definition" used in the statute raises serious problems.

It is unclear what "deportable as determined by the federal government" means. Does this mean, as defined in the immigration and Naturalization Act? or as determined by an immigration judge, or as determined by a final decision that cannot be further appealed?

A lot of people fall under the "deportable" category under certain sections of the Act, but are authorized to work because they are also covered by other sections of the INA, e.g 245 a, allowing adjustment of status for the immediate relative of a US citizen. E.g. A French citizen is in the United States under an H-1B visa for highly skilled workers. He marries a US citizen. They have a child together; he is the bread winner for the family. Then his company downsizes; his job is eliminated. He now has lost his h 1b status, but that would not be that much of a problem because he is eligible to become a permanent resident based on his marriage to a USC.

His wife files an I-130 for him to classify him as an immediate relative and he files for adjustment of status to have his status adjusted to that of a permanent legal resident.

Let's say, he filed just a few days after his job with his employer terminated. He is a highly qualified, educated and skilled person with global experience, highly sought after. Within a few weeks, he has another job offer and, under US immigration law, he will get work authorization within 90 days after filing for adjustment of status.

Technically, under one section of the INA, he is also "deportable" because he lost his lawful non-immigrant status when his employment with his first employer terminated.

But under other provisions of the INA he is now deemed to be in an "authorized stay" authorized by the Attorney General pending the adjudication of his Adjustment of Status application. This is the situation with many family based adjustment of status cases. These spouses of US citizens are given work authorization because they will be living in the United States with their families, and the policy decision was made that they should be able to work to support their families.

Under this new law, the husband, whose wife has a toddler, would now not be able to work. His license might not be renewed because under this new law, arguably he falls under the definition of "unlawful alien." Under federal immigration law, on the other hand he is entitled to his employment authorization document 90 days after submitting his adjustment application. He is entitled to work but this status would prevent him from having his license renewed. Under this State law, he may not be able to work for a year until his AOS has been granted.

This is just one example of the numerous problems with this law. There are numerous situations under the INA where a person may fall under a classification of being "deportable" under one section but be eligible for an exception or a waiver under another section of the INA. The definition of "unlawful alien" as used in this proposed law therefore simply does not work. It is going to cause lots of problems rather than solve any problems.

What troubles me most, is that under this proposed legislation, people are going to be categorized as "deportable alien" and have their license denied without any final immigration judge determination that they are deportable, and even though under federal law, they may not be "deportable" at all because they also fall under another category e.g. AOS as in the example above where it is perfectly legal for them to live and work in the United States. They will have work authorization and at the same time they would be subject to a state law denying them their license and their right to earn a living.